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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-first session

SUMMARY RECORD (PARTIAL)* OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 November 1999, at 10.30 a.m.

Chairperson: Mrs. BONOAN-DANDAN

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.30 a.m.

OPENING OF THE SESSION

1. Mr. GAHAM (Office of the High Commissioner for Human Rights), opening the session on behalf of the High Commissioner, said that the High Commissioner proposed to attend a meeting of the Committee on Friday 26 November to raise points of general interest, in particular the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance due to be held in 2001 in South Africa. She also intended to discuss the right to education and the relationship between economic, social and cultural rights and the right to development. The coordination of the Committee's activities with procedural mechanisms involving special rapporteurs and special representatives would also be discussed.

2. The report previously submitted to the Economic and Social Council by the High Commissioner had been devoted to the implementation of economic, social and cultural rights, and showed the importance the High Commissioner attached to the protection and promotion of human rights in general. The annual appeal for member States' contributions, due to be launched shortly, was designed to strengthen the operational capacity of all treaty bodies including that of the Committee. The Committee had already conducted several activities which had produced conclusive results. Firstly, additional recruitment had enabled the current session of the Committee to be prepared in a more structured and effective manner. Secondly, better coordination had been achieved between the Committee's activities and those of the specialized agencies. Similarly, the activities of the special procedural mechanisms had been better coordinated with those undertaken by the Committee. Important examples were those of the independent experts on extreme poverty and on the effects of structural adjustment policies on the effective implementation of human rights.

3. Finally, the Committee had played an essential role in preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. In addition, the secretariat had prepared a document containing ideas focusing on the general comments adopted by the Committee in the course of its various sessions, especially that relating to article 13 of the Covenant on the right to education.

4. Mr. SADI asked whether, in the light of the ongoing debate in the World Trade Organization (WTO) regarding the role of social and economic rights, a suitable representation would be made to that organization at its forthcoming meeting in Seattle.

5. Mr. GAHAM (Office of the High Commissioner for Human Rights) said that the secretariat would shortly be providing information on that matter.

6. The CHAIRPERSON expressed the Committee's gratitude to the Office of the High Commissioner for Human Rights for its efforts in promoting the work of the Committee.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (E/C.12/1999/6)

7. The agenda was adopted.

ORGANIZATION OF WORK (agenda item 2) (E/C.12/1999/L.2)

8. The CHAIRPERSON drew attention to the draft programme of work contained in document E/C.12/1999/L.2. Responding to a remark by Mr. TEXIER, she said that since no report had yet been submitted by Bolivia, consideration of that country, scheduled for the 36th meeting, would be deferred to a subsequent session. As an alternative, a preliminary discussion of the draft general comment on the right to education could be conducted prior to the statement given by the High Commissioner for Human Rights and consideration of the situation in the Solomon Islands. Further consideration could also be given to the role to be played by the Committee in the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and members could be chosen to represent the Committee at the Conference.

9. Mr. HUNT requested confirmation that the Committee intended to consider both the right to health and the right to education at its current session.

10. The CHAIRPERSON said that the Committee would focus on article 13 of the Covenant and its draft general comment on the right to education.

11. Mr. RIEDEL reminded Members that he was currently working on a draft study on the right to health that would contain preliminary points for a discussion. The document would be presented to the bureau and to the Committee itself.

12. The draft programme of work was adopted.

13. The CHAIRPERSON, reporting on her activities since the twentieth session, said she had attended a workshop on gender integration in the human rights system, held under the joint auspices of the Division for the Advancement of Women, the United Nations Development Fund for Women (UNIFEM), the United Nations Population Fund (UNFPA) and the Office of the High Commissioner for Human Rights. She had also presented a case study on women's rights to the eleventh meeting of persons chairing the human rights treaty bodies, which had coincided with a further meeting in which special rapporteurs had participated.

14. In September 1999 the Asia-Pacific Forum of National Human Rights Institutions had held a meeting in Manila, Philippines, focused on economic and social rights. The omission of cultural rights from its agenda was unusual, given the fact that cultural rights were an integral part of the mechanism in operation. The representatives of the Asia-Pacific region, which had by far the fewest States parties to the Covenant, had been invited to report to the Committee on their work.

15. She had also been invited to speak before a group of non-governmental organization (NGO) partners that was trying to campaign for the inclusion of economic, social and cultural rights in the agenda of NGOs, especially in the Asia-Pacific region. Finally, a workshop had taken place, entitled "ensuring equity in aid, trade and lending, global governance and a human-rights approach to development".

16. Since the previous session of the Committee, the Economic and Social Council had approved the convening of two additional extraordinary three-week sessions in Geneva. Moreover, a pre-sessional working group had been authorized to meet in 2000 and 2001, provided that the requisite funding became available. The Economic and Social Council had requested the Committee to consider ways of improving the efficiency of its working methods, thereby reducing the backlog of country reports due for examination. The proceedings of plenary meetings could be accelerated in various ways. By holding informal discussions outside the Committee room the time spent on the Committee's concluding observations could be greatly reduced. A more radical proposal was that of holding two simultaneous meetings in order to double the number of reports considered. Further consideration of such a proposal was clearly necessary. As to the examination of the report submitted by the Solomon Islands, the bureau of the Committee would meet to see how to proceed on the matter.

17. With regard to the draft general comment on article 12 concerning the right to health, proposals could be submitted in writing to Mr. Riedel. The deferral of consideration of article 12 would enable the Committee to seek the opinions of independent experts, and in particular the cooperation of the World Health Organization (WHO). Finally, Committee members had received a letter from the Deputy High Commissioner for Human Rights regarding a study conducted by Mr. Philip Alston, a former chairperson of the Committee. Committee members had been requested to present their views on the study following the current session and it was proposed that a member should be designated to whom comments could be submitted. In the light of his long experience of working with treaty bodies, she proposed that Mr. Sadi should be invited to coordinate and consolidate those comments.

18. It was so decided.

19. The CHAIRPERSON invited Committee members to reflect on the possible contents of chapter VII (Suggestions and recommendations of a general nature) of the report on its twentieth and twenty-first sessions, with a view to drafting specific proposals on the subject before the close of the current session.

20. She also drew attention to the fact that, thanks to the efforts of the secretariat, country profiles would be ready in time for the pre-sessional working group meeting scheduled for Spring of the year 2000 and could therefore be taken into consideration when drawing up the lists of issues for States parties' reports. It was also worth noting that recently the secretariat had been actively involved in cooperation activities undertaken by the Office of the High Commissioner for Human Rights with other United Nations agencies, notably the United Nations Development Programme (UNDP). A representative of the secretariat would brief the Committee on those developments in the course of the current session.

SUBMISSION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 8)

21. The CHAIRPERSON drew attention to a letter from the Permanent Mission of Denmark, dated 30 June 1999, concerning the submission of Denmark's fourth periodic report, which had been due on 30 June 1999. The letter pointed out that the Committee had only very recently been provided with up-to-date information on the status of implementation of the Covenant in

Denmark, during consideration of the third periodic report, which, although submitted in 1996, had not been considered until the twentieth session in May 1999. It therefore requested that the deadline for submission of the fourth periodic report should be postponed until the end of June 2001, thereby allowing the Danish Government sufficient time to prepare the report, as well as re-establishing the recommended five-year reporting cycle. Given that Denmark's third periodic report had dealt with the whole Convention, the Danish Government would also welcome the Committee's views on what specific issues the fourth periodic report should focus on. Pending a response from the Committee on the matter, the Danish Government requested that its name should not appear on the list of States parties whose reports were overdue.

22. Clearly, the letter from the Permanent Mission must be followed up without further delay. Moreover, it called for some reflection on a situation created by the current backlog in the consideration of States parties' reports, as well as on the need for a more focused list of issues, particularly where periodic reports were concerned.

23. Mr. GRISSA said that, in view of the backlog, the Committee should accede to the Danish Government's request for a postponement of the deadline for submission of its fourth periodic report.

24. Mr. RIEDEL said that although the Committee was in a difficult situation, owing to the considerable backlog to be cleared, it must remember that the reporting cycle established was a specific obligation under the Covenant, which States parties should not be allowed to shirk. He agreed that the Committee should accede to the Danish Government's request but stressed that it should be made quite clear in the reply that such practice was not customary, particularly since the preparation of periodic reports was less onerous than that of initial reports.

25. He welcomed the Danish Government's query about the list of issues. The Committee should take up the matter during the current session, in connection with the improvement of its working methods.

26. Mr. CEAUSU said that the Committee must be flexible about the periodicity of reports. Where there was a considerable time lapse between the submission and the consideration of a State party's report, the Committee normally took recent developments into consideration when making its assessment. The Committee should therefore accede to the Danish Government's request. However, as it was likely that similar problems would arise in future, the Committee must make provision for them, for instance by including a recommendation in the relevant concluding observation that the next periodic report should be submitted within a period of two or three years. In so doing the Committee would lighten its work schedule, leaving itself time to deal with more urgent matters as and when they arose.

27. Mr. ANTANOVICH expressed concern about the backlog of reports to be considered, which despite the prospect of two additional sessions would probably not be cleared entirely. The Committee must use every means at its disposal to urge States parties to be more responsible and to comply with the established reporting schedule. He agreed, however, that the Committee should agree to the Danish Government's request, given the fact that it had an up-to-date picture

of the situation vis-à-vis the Covenant in Denmark and that the request had been submitted through the proper channels. The comment on the list of issues should be followed up during the current session.

28. The CHAIRPERSON said she would take it that the Committee wished to accede to the Danish Government's request to defer submission of its fourth periodic report until the end of June 2001. The Committee would also follow up the request for guidance as to what specific issues should be addressed in the report. A reply to that effect would be drafted by the secretariat and circulated to Committee members for approval.

29. It was so decided.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3)

Draft general comment on article 13 (Right to education)

30. Mr. HUNT introduced an informal background note designed to facilitate discussion of the draft general comment on article 13 he had been entrusted with the task of preparing. The note dealt with the preparation, length and general structure of the draft general comment and also included notes on specific paragraphs.

31. Following the day of general discussion on the right to education held in November 1998, an outline of the draft general comment had been prepared and circulated to Committee members and others in April 1999. Between August and October 1999 several NGOs had held consultations on article 13. Informal input had also been provided by international organizations such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organization (ILO), other NGOs and experts from other United Nations bodies, as well as individual Committee members. Those contributions did not, however, necessarily imply endorsement of the text of the draft general comment he had prepared by any of the parties consulted.

32. If adopted in its present form the draft general comment on article 13 would be by far the Committee's longest general comment. It must, however, be borne in mind that article 13 was the longest provision in the Covenant and was full of complex phrases which required comment or explanation. Thus, in order to maintain the high standard set by the Committee's previous general comments, and if it was to be really useful to States parties, the general comment on article 13 would inevitably have to be fairly long.

33. Article 13 covered a wide range of issues such as academic freedom, basic education and non-discrimination which were dealt with by other United Nations agencies and bodies. The Committee was, however, unique in that it was the only body entrusted with monitoring all issues relating to the right to education; and because of its exceptional vantage point, was particularly well placed to provide holistic advice on the subject. It would therefore be a mistake for the Committee to neglect such issues simply because they were dealt with elsewhere in the

United Nations system. Hence, the text of the draft general comment aimed to draw upon and consolidate the norms and experience of other United Nations bodies while avoiding any duplication of efforts.

34. In July 1999 the secretariat had prepared a one-page draft outline for general comments on specific rights enshrined in the Covenant. Although not yet formally adopted, that outline had exerted a significant influence on the structure of the draft general comment on article 13.

35. Since the text of the draft general comment had only just become available in all language versions, he suggested deferring consideration of the notes on specific paragraphs of the draft general comment until all Committee members had had time to familiarize themselves with the text.

36. Mr. RIEDEL said he had found the informal background note extremely useful and endorsed Mr. Hunt's suggested approach.

37. Mr. HUNT said that section II lay at the heart of the draft general comment, clarifying the normative content of article 13. Paragraphs 57-63 reaffirmed the broad legal obligations of States parties, already clarified by General Comment No. 3; paragraphs 65-74 defined some specific obligations that arose when Section II was applied to those broad legal obligations; and paragraphs 75-76 provided a few illustrations of violations of article 13. Application of the normative content to those broad legal obligations would lead in time to the identification of numerous specific legal obligations and violations which it would perhaps be premature for the Committee to catalogue at the current stage.

38. Section III, dealing with obligations and violations, could be divided into two separate sections, one or both of them providing more detail. In that case, however, the draft would become even longer.

39. In conclusion, he thanked all those who had contributed to the informal consultation process, and requested Committee members to share their views with him informally once they had received the draft in the various language versions so that it could be honed and revised.

40. The CHAIRPERSON said Mr. Hunt's informal note had enabled Committee members to focus on the substantive issues relating to the draft general comment. She suggested that discussion of its length should be deferred.

41. Mr. RIEDEL said that general comments placed a greater burden on States parties and should thus neither be a mere academic exercise nor focus solely on facilitating the Committee's work. Their purpose was, not to dwell on points of policy, but to clarify the normative issues for the States parties. The fact that education was already addressed in other forums did not mean that it should not be clarified in the Committee's general comments.

42. The secretariat's draft outline had in effect been informally adopted, and should be followed in future general comments. He also applauded the use of the core concept of

availability, accessibility, adaptability and acceptability as the analytical framework. That concept had been successfully applied to the general comment on the right to food, and he intended to use it in his draft general comment on the right to health.

43. Mr. SADI said that in addition to the informal input provided by other agencies dealing with the right to education, a formal contribution was also in order. To ensure coordination, the draft should at some stage be submitted to those agencies for their formal comments.

44. He also wondered whether a general comment of 77 paragraphs was not tantamount to another covenant devoted to the right to education, and whether States parties might not be reluctant to avail themselves of such a cumbersome document. Lastly, although the four themes of the analytical framework were important, it was also vital that the content of the education - human rights, gender equality, peace, etc. - should be spelled out.

45. Mr. ANTANOVICH said that while the length of the draft general comment caused some concern, Governments needed as much clarification as possible. His recent attendance at a workshop in Prague in connection with the drafting of the Czech Republic's periodic report had impressed upon him the eagerness of European countries in transition to receive all possible assistance with the preparation of their reports. Given the large number of government agencies and other bodies involved, communication was already difficult. While States parties must be made aware of their obligations and the list of possible violations should be retained as a warning, he had some suggestions for compression or deletion which he would make directly to Mr. Hunt.

46. With so many international agencies working on the right to education, it had been wise to seek a separate consultation with UNESCO. The formal dialogue advocated by Mr. Sadi was less important than informal consultations. What was crucial, however, was the Committee's right to express its view from its unique position within the United Nations, which could not be delegated to any other body. The forthcoming discussion on the draft general comment should thus focus on the merits of the content, and discussion of its length should be deferred.

47. The CHAIRPERSON pointed out that formal input would be provided by independent experts, NGOs and others during the day of general discussion.

48. Mr. TEXIER said that the rights and obligations under article 13 should be clearly defined so as to avoid totally erroneous interpretations of the article. Since so many levels and areas of education were involved, a few lines would not suffice. The Human Rights Committee had built up a body of jurisprudence for civil and political rights, and the Committee on Economic, Social and Cultural Rights should be moving along the same lines, even though it did not as yet have an optional protocol.

49. The Covenant itself called for cooperation with the specialized agencies on economic, social and cultural rights. The obligation was a twofold one: the specialized agencies were invited to facilitate the Committee's work, and the Committee was invited to consult them. The drafting of general comments provided an ideal opportunity for such cooperation. There had been fruitful cooperation with the Food and Agriculture Organization of the United Nations (FAO) concerning the general comment on the right to food, and FAO was

currently using that general comment to establish framework legislation. He hoped UNESCO would do the same for education. His first action with regard to his draft general comment on the right to work (article 6 of the Covenant) would be to consult ILO, which had already written a great deal on the issue, and avail himself of that organization's vast experience.

50. There was no specific criterion with regard to the length of general comments. Their purpose was to help States parties by providing a framework of rights, in which international cooperation played a vital part.

51. Mrs. JIMÉNEZ BUTRAGUEÑO said that it was easier to cut than to add to the draft general comment and that she would make her comments in writing.

52. The CHAIRPERSON said that although the issue of length needed to be dealt with, the substance of the comment should be taken up first. The Committee was currently embarking on a series of comments designed to define the normative content of the various rights set forth in the Covenant. It needed to discuss the draft general comment in detail not in a spirit of negative criticism, but because it concerned the first article to come into direct focus for the purpose of a general comment.

53. Mr. HUNT welcomed the extremely constructive comments he had received and the spirit in which they had been made. He was confident that the process of refinement, which had begun a year earlier with the day of general discussion, would lead to a generally acceptable result. He looked forward to reading Mr. Antanovich's written comments. The comments by Mr. Texier he already fully endorsed. When the Committee members were able to look at his own full text, they would see that it in fact used the tripartite analytical framework already present in the general comment on food as well as the idea of the core content for substantive rights identified in General Comment No. 3.

54. General Comments were of course addressed to States parties: the resolution mandating the Committee to elaborate such comments made that clear. Other parties, however, such as NGOs and specialized agencies as well as national human rights agencies, were also listening; and there was a general hunger for a normative clarification of economic, social and cultural rights. The changes that had ensued in the last two years placed a heavy burden on the Committee, part of which was the task of somehow elaborating the substantive rights contained in the Covenant.

55. In response to Mr. Sadi's question whether there was to be any formal input, he said that the draft had been circulated for comment to a number of experts and specialized agencies, including UNESCO, ILO and the Special Rapporteur on education. He had engaged in an informal process but formal consultations were now in train.

56. Regarding the length of the comment, while he understood the need to be as concise as possible and accepted that the text needed to be trimmed, the true test was that of usefulness. He did not himself envisage that the general comment would be read straight through. He saw it, rather, as a reference document where a State party wanting help on a particular issue, such as primary education or discipline in schools, would turn to the paragraphs in question. He entirely endorsed Mr. Sadi's point that the content of education was crucial. Paragraphs 4 to 7 of the

draft, which elaborated on article 13, paragraph 1, of the Covenant, would help States parties to understand that provision. Simply chipping away at the general comment, as suggested by Mrs. Jiménez Butragueño was probably the right approach to shortening it.

57. Lastly, he noted that there was to be a day of general discussion towards the end of the session. He hoped that the Committee would be able to adopt the draft general comment on the right to education on that occasion.. It would be helpful if suggestions from NGOs and other parties could be received in writing before then so that he would have more time to reformulate and improve the text in the light of the comments received.

58. The CHAIRPERSON said that the day of general discussion would undoubtedly bring forward a flood of fresh suggestions and comments. The Committee was nevertheless determined to adopt the general comment at the current session.

59. Mr. SADI said that while the reasons given for the length of the general comment were persuasive, he wondered whether, given the nature of the Covenant, so precise and detailed a general comment might not put States in a kind of straitjacket. His anxieties might, of course, be dispelled on reading the actual text.

General Comment No. 5 on application of the Covenant regarding older persons

60. Mrs. JIMÉNEZ BUTRAGUEÑO said that, with the International Year of Older Persons drawing to a close, it was frustrating that so little had been achieved in that field. She had recently received a copy of a memorandum from the Director of the New York Office of the High Commissioner for Human Rights, addressed to its Geneva office, praising the Committee's General Comment No. 5 and inquiring whether the Committee had included the issue of older persons in its reporting guidelines.

61. In her reply she had stated that it was highly important that questions regarding the situation of older persons in respect of the fulfilment of the various articles of the Covenants, should be included in the reporting guidelines; and that she had herself prepared draft guidelines that included a number of questions in respect of older persons. It was most important for all human rights treaty bodies to include such questions in their reporting guidelines as well as in the lists of issues sent to States parties during the consideration of their reports. The number of older persons was steadily increasing and there was as yet no special body to protect their interests. It was therefore incumbent on all the treaty bodies to provide such protection.

62. The CHAIRPERSON thanked Mrs. Jiménez Butragueño for her initiative in replying to the memorandum from the Office of the High Commissioner.

63. Mr. TIKHONOV (Secretary of the Committee) said that, on 30 September and 1 October 1999, the United Nations, in cooperation with WHO and many NGOs, had organized two days of commemorative activities in connection with the International Year of Older Persons. The secretariat had participated fully in the preparatory work and was also deeply involved in the commemorative activities themselves. A brochure on human rights and older persons had been prepared, containing a foreword by the High Commissioner, excerpts from the Committee's own general comment, key points of the 62 recommendations for action of

the 1982 Vienna International Plan of Action for the Ageing, as well as recommendations for follow-up of the International Year and a chronology of internationally endorsed policies in regard to older persons. Copies of the brochure would be distributed for the Committee's information.

64. In regard to facilities for the work of Committee Members, two offices were now available on the fifth floor for the use of the Chairperson and Members, one of which contained a computer and a printer.

65. Mr. TEXIER, reverting to the remarks made by Mr. Sadi at the start of the meeting, concerning the forthcoming meeting of the World Trade Organization, suggested that, in addition to any statement the High Commissioner might wish to make, the Committee itself should send a message. It was important that the Committee should have a relationship with WTO as its functions touched directly on economic and social rights. There was no time to draft a detailed document but a message of some kind should be sent.

66. The CHAIRPERSON said she had intended to make a similar suggestion. The Committee undoubtedly needed to address such issues as the effect on human rights of structural adjustment programmes and trade conditionalities. If she heard no objection, she would take it that the Committee agreed that a message should be sent to WTO and that the bureau would take a decision as to who should draft it.

67. It was so decided.

68. The CHAIRPERSON invited the Committee to begin its hearings of NGOs on substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights.

The discussion covered in the summary record ended at 12.40 p.m.